SEPARATE OPINION OF JUDGE CANÇADO TRINDADE

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I. *Prolegomena*

1. I have concurred, with my vote, for the adoption by unanimity, by the International Court of Justice (ICJ), of the present Order of today, 3 October 2018, indicating provisional measures of protection in the case of *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights [Alleged Violations of the 1955 Treaty of Amity]* (*Islamic Republic of Iran* [Iran] v. *United States of America* [United States or US]). Iran has sought to found the ICJ's jurisdiction on Article XXI (2) of the Treaty and Article 36 (1) of the ICJ Statute, and, in requesting provisional measures, it has referred to Article 41 of the ICJ Statute and Articles 73-75 of the Rules of Court.

2. In the present Order, the ICJ, having found that it has prima facie jurisdiction pursuant to Article XXI (2) of the 1955 Treaty (Order, para. 52), has rightly ordered, with my support, the provisional measures of protection set forth in the *dispositif* (*ibid.*, para. 102). Additionally, I attribute great importance to some related issues in the *cas d'espèce*, that in my perception underlie the present decision of the ICJ but are not entirely dealt with in the Court's reasoning, and that in my perception should not pass unexplored.

3. I feel thus obliged to leave on the records, in the present separate opinion, the identification of such issues and the foundations of my own personal position thereon. I do so, once again under the merciless pressure of time, moved by a sense of duty in the exercise of the international judicial function, even more so as some of the lessons I extract from the matter forming the object of the present decision of the Court are not sufficiently dealt with in the Court's reasoning in the present Order.

4. My reflections as developed in the present separate opinion address, above all and at length, key points pertaining to provisional measures of protection. Before I turn to my own examination of them, I deem it fit to start with my initial considerations of a hermeneutical and axiological nature, dwelling upon three points which are also significant in the proper handling of the *cas d'espèce*, namely: *(a)* international peace: treaties as living instruments, in the progressive development of international law; *(b)* provisional measures: the existence of the Court's prima facie jurisdiction; and *(c)* the prevalence of the imperative of the realization of justice over the invocation of "national security interests".

5. My following considerations, focused on provisional measures of protection, are, at a time, conceptual and epistemological, juridical and philosophical, always attentive to human values. I shall develop my reflections in a logical sequence. The first part of them, of a conceptual and epistemological character, comprises: *(a)* transposition of provisional measures of protection from comparative domestic procedural law onto international legal procedure; *(b)* juridical nature of provisional measures of protection; *(c)* the evolution of provisional measures of protec-

tion; *(d)* provisional measures of protection and the preventive dimension of international law; and *(e)* provisional measures of protection and continuing situations of human vulnerability.

6. The second part of my reflections on provisional measures of protection, of a juridical and philosophical nature, encompasses: *(a)* human vulnerability: humanitarian considerations; *(b)* beyond the strict inter-State outlook: attention to peoples and individuals; *(c)* continuing risk of irreparable harm; *(d)* continuing situation affecting rights and the irrelevance of the test of their so-called "plausibility"; and *(e)* considerations on international security and urgency of the situation. The way will then be paved, last but not least, for the presentation, in an epilogue, of a recapitulation of the key points of the position I sustain in the present separate opinion.

II. International Peace: Treaties as Living Instruments, in the Progressive Development of International Law

7. Treaties are living instruments, and the 1955 Treaty of Amity (between Iran and the US) is no exception to that. This understanding finds support in the ICJ's *jurisprudence constante*. In the course of this last decade, for example, in *Dispute regarding Navigational and Related Rights (Costa Rica* v. *Nicaragua)*, Judgment of 13 July 2009, the Court explained that "evolutionary interpretation" refers to

> "situations in which the parties' intent upon conclusion of the treaty was, or may be presumed to have been, to give the terms used — or some of them — a meaning or content capable of evolving, not one fixed once and for all, so as to make allowance for, among other things, developments in international law" (*I.C.J. Reports 2009*, p. 242, para. 64).

8. The ICJ then concluded that Costa Rica's freedom of navigation (which includes "commerce") must be understood based on the circumstances in which the Treaty has to be applied, and "and not necessarily their original meaning. (. . .) [I]t is the present meaning which must be accepted for purposes of applying the Treaty." (*Ibid.*, p. 244, para. 70.)

9. In particular, the basis for an evolutionary approach to treaty interpretation stems from Article 31 of the 1969 Vienna Convention on the Law of Treaties (VCLT), providing for the "general rule of interpretation". Article 31 (1) is the starting-point, requiring that a treaty be interpreted in good faith in accordance with "the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose".

10. Article 31 (3) *(c)* of the VCLT provides that treaties must be interpreted in the light of "any relevant rules of international law applicable in

the relations between the parties". The VCLT (Articles 31 (1) and 31 (3) *(c)*) is seen as permitting an evolutionary approach in interpreting and applying a treaty like the aforementioned 1955 Treaty of Amity.

11. Article I of the 1955 Treaty contains its object and purpose (a firm and enduring peace and friendship between the parties). Significantly, the object and purpose of that Treaty has likewise been addressed by the ICJ in earlier cases, so as to assist in its interpretation. Thus, in the case concerning *United States Diplomatic and Consular Staff in Tehran (United States of America* v. *Iran)*, Judgment of 24 May 1980, the ICJ stated that

> "The very purpose of a treaty of amity, and indeed of a treaty of establishment, is to promote friendly relations between the two countries concerned, and between their two peoples, more especially by mutual undertakings to ensure the protection and security of their nationals in each other's territory. It is precisely when difficulties arise that the treaty assumes its greatest importance, and the whole object of Article XXI, paragraph 2, of the 1955 Treaty was to establish the means for arriving at a friendly settlement of such difficulties by the Court or by other peaceful means. It would, therefore, be incompatible with the whole purpose of the 1955 Treaty if recourse to the Court under Article XXI, paragraph 2, were now to be found not to be open to the parties precisely at the moment when such recourse was most needed." (*I.C.J. Reports 1980*, p. 28, para. 54.)

12. Subsequently, in the case concerning *Oil Platforms (Islamic Republic of Iran* v. *United States of America)* (preliminary objection, Judgment of 12 December 1996), the ICJ confirmed the weight given to Article I when applying and interpreting the 1955 Treaty of Amity, pointing out that it considered that "the objective of peace and friendship proclaimed in Article I of the Treaty of 1955 is such as to throw light on the interpretation of the other Treaty provisions" (*I.C.J. Reports 1996 (II)*, p. 815, para. 31). The ICJ then added:

> "The Court cannot lose sight of the fact that Article I states in general terms that there shall be firm and enduring peace and sincere friendship between the Parties. The spirit and intent set out in this Article animate and give meaning to the entire Treaty and must, in case of doubt, incline the Court to the construction which seems more in consonance with its overall objective of achieving friendly relations over the entire range of activities covered by the Treaty." (*Ibid.*, p. 820, para. 52.)

13. The Court thus found that Article I of the 1955 Treaty of Amity allows it to undertake an evolutionary interpretation of the relevant provisions of the Treaty. Later on, still in the same case concerning *Oil Platforms (Islamic Republic of Iran* v. *United States of America)*, Merits, Judgment of 6 November 2003), the ICJ, after again referring to Arti-

cle 31 (3) *(c)* of the 1969 VCLT, confirmed/stated that the application of the "relevant rules of international law" relating to the question of unlawful use of force thus formed "an integral part" of the task entrusted to it, by Article XXI (2), of interpretation of the 1955 Treaty of Amity (*I.C.J. Reports 2003*, p. 182, para. 41). This Treaty is not frozen in time; it is to be interpreted, as the ICJ itself makes it clear, taking into account also factors extending beyond the text itself of the 1955 Treaty.

III. Provisional Measures: The Existence of the Court's Prima facie Jurisdiction

14. In the present Order of provisional measures of protection, the ICJ has rightly found that it has jurisdiction prima facie to indicate them. The basic object and purpose of the 1955 Treaty of Amity were duly taken into account, as on an earlier occasion (the aforementioned case of *Oil Platforms, Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, p. 187, para. 52). The present dispute on the *Alleged Violations of the 1955 Treaty of Amity*, lodged with the Court for peaceful settlement, falls within the scope of the Treaty of Amity of 1955 in respect of provisional measures.

15. On other earlier occasions in recent months, the Court, at the stage of provisional measures, has repeatedly stated, as to its findings on jurisdiction prima facie only, that it does not need to "satisfy itself in a definitive manner that it has jurisdiction as regards the merits of the case" (case of *Jadhav (India* v. *Pakistan)*, 2017; and case of the *Application of the International Convention on the Elimination of All Forms of Racial Discrimination CERD Convention*, opposing Qatar to the United Arab Emirates [United Arab Emirates], 2018)[1]. In the present Order in the case of the *Alleged Violations of the 1955 Treaty of Amity*, opposing Iran to the United States, the ICJ upholds the same position (para. 24).

16. Even in face of allegations of "national security interests" (as in the *cas d'espèce*), the ICJ, to the effect of ordering provisional measures of protection, is the guardian of its own Statute (Art. 41) and *interna corporis*, on the basis of which it takes its decision, in its mission (common to all contemporary international tribunals) of realization of

[1] *Jadhav (India* v. *Pakistan), Provisional Measures, Order of 18 May 2017, I.C.J. Reports 2017*, p. 253, para. 15; case of the *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v. *United Arab Emirates), Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018 (II)*, p. 413, para. 14. And cf. also, earlier on, case of the *Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste* v. *Australia), Provisional Measures, Order of 3 March 2014, I.C.J. Reports 2014*, p. 151, para. 18.

justice[2] (cf. *infra*). The present case, opposing Iran to the United States, is not the only example to this effect.

17. It should not pass unnoticed that, in the case of the *Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste* v. *Australia), Provisional Measures, Order of 3 March 2014* [hereinafter *Seizure and Detention of Certain Documents and Data*], the ICJ, irrespective of the respondent State's considerations of "national security", ordered provisional measures (*I.C.J. Reports 2014*, p. 158, paras. 45-46 and pp. 159-160, para. 55). Subsequently, in another case of the *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation)* [hereinafter *Application of the ICSFT Convention and of the CERD Convention*], *Provisional Measures, Order of 19 April 2017*), the ICJ did the same (*I.C.J. Reports 2017*, p. 137, para. 93 and pp. 140-141, para. 106).

18. And shortly afterwards, in the aforementioned case of *Jadhav (India* v. *Pakistan), Provisional Measures, Order of 18 May 2017*, once again the same took place, irrespective of invocation of "national security" (*I.C.J. Reports 2017*, p. 238, para. 23 and p. 246, para. 61). As can be seen, the decision taken by the ICJ in the present Order is in conformity with its *jurisprudence constante* in respect of provisional measures: the imperative of the interim protection that such measures afford prevails over allegations or strategies of national interest or security.

19. The ICJ's jurisprudence on the matter has, to start with, given expression to the essence of prima facie jurisdiction, since its origins: it may be exercised irrespective of the "will" of the contending parties, and even if the Court is not yet sure as to its jurisdiction on the merits; prima facie jurisdiction[3] is not conditioned by this latter, as pointed out by its denomination itself. To the aforementioned jurisprudential development as a whole, I can add the gradual understanding of the *raison d'être* of jurisdiction prima facie in respect of provisional measures of protection, also on the part of a more lucid trend of international legal doctrine.

20. In this respect, may I recall the observations of two jurists of whom I keep a good memory: one of them drew attention to the prima facie jurisdiction autonomous from the jurisdiction on the merits, and pondered that prima facie jurisdiction in respect of provisional measures

[2] For an examination of the international tribunals' common mission of realization of justice, cf. A. A. Cançado Trindade, *Os Tribunais Internacionais e a Realização da Justiça*, 2nd rev. ed., Belo Horizonte, Edit. Del Rey, 2017, pp. 11-65, 127-240, 297-428 and 447-456; A. A. Cançado Trindade, "Les tribunaux internationaux et leur mission commune de réalisation de la justice: développements, état actuel et perspectives", 391 *Recueil des cours de l'Académie de droit international de La Haye* (2017), pp. 38-101; A. A. Cançado Trindade, *Los Tribunales Internacionales Contemporáneos y la Humanización del Derecho Internacional*, Buenos Aires, Ed. Ad-Hoc, 2013, pp. 43-185.

[3] Cf., e.g., Union académique internationale, *Dictionnaire de la terminologie du droit international*, Paris, Sirey, 1960, p. 472.

"would appear to be exercisable even when the Court has doubts about its jurisdiction over the merits, a very low threshold"[4]; and the other observed that

> "the power to indicate provisional measures is not based on the will of the parties to the dispute. It is founded on Article 41 of the Statute . . . [I]t is because the Court obtains this power from its Statute that it is able to indicate such measures . . . In short and to conclude, the power to indicate provisional measures derives from Article 41 of the Statute."[5]

IV. The Prevalence of the Imperative of the Realization of Justice over the Invocation of "National Security Interests"

21. The case law of the ICJ that I have just referred to has, on successive occasions, been to the effect of the Court's ordering of provisional measures of protection, on the basis of its Statute (Art. 41) and *interna corporis*, irrespective of the invocation, by the respondent States, of "national security interests". With its findings of prima facie jurisdiction, the ICJ has done so, whenever necessary, attentive to the imperative of the realization of justice.

22. The case of the *Seizure and Detention of Certain Documents and Data* (2014-2015) calls for further attention in this respect: besides the aforementioned ICJ's Order of 3 March 2014, the Court subsequently adopted its additional Order of 22 April 2015 (modified provisional measures indicated). I have appended a separate opinion to each of those two Orders, dealing with the point at issue, which has now appeared again in the present case of the *Alleged Violations of the 1955 Treaty of Amity*.

23. In my separate opinion in the Court's Order of 3 March 2014 in the case of the *Seizure and Detention of Certain Documents and Data*, after examining the answers that Timor-Leste and Australia provided to my question (as to the "measures of alleged national security") that I put to them in the Court's public sitting of 21 January 2014 (*I.C.J. Reports 2014*, pp. 178-181, paras. 33-36), I pondered that such invocation of alleged "national security" cannot be made the concern of the Court, which

> "has before itself general principles of international law (. . .), and cannot be obfuscated by allegations of 'national security' (. . .). In any

[4] S. Rosenne, "Provisional Measures and Prima Facie Jurisdiction Revisited", *Liber Amicorum Judge S. Oda* (eds. N. Ando et al.), Vol. I, The Hague, Kluwer, 2002, pp. 527 and 540, and cf. pp. 541-542.

[5] C. Dominicé, "La compétence *prima facie* de la Cour internationale de Justice aux fins d'indication de mesures conservatoires", *ibid.*, Vol. I, pp. 391 and 394, and cf. p. 393 *[translation by the Registry]*.

> case, an international tribunal cannot pay lip-service to allegations of 'national security' made by one of the parties in the course of legal proceedings." (*I.C.J. Reports 2014*, pp. 181-182, para. 38.)

24. I stressed that allegations of the kind "cannot at all interfere" with the Court's work of "judicial settlement" of a controversy brought before it (*ibid.*, pp. 182-183, paras. 41 and 43). I then recalled that,

> "throughout the drafting of the 1970 UN Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (1964-1970), the need was felt to make it clear that stronger States cannot impose their will upon the weak, and that *de facto* inequalities among States cannot affect the weaker in the vindication of their rights. The principle of the juridical equality of States gave expression to this concern, embodying the *idée de justice*, emanated from the universal juridical conscience." (*Ibid.*, p. 184, para. 45.)

25. I then concluded that general principles of international law, such as the juridical equality of States (enshrined into Article 2 (1) of the UN Charter), encompassing the equality of arms *(égalité des armes)* and the due process of law, cannot be undermined by allegations of "national security"; the basic principle of the juridical equality of States, "embodying the *idée de justice*, is to prevail" (*ibid.*, p. 192, paras. 67-68).

26. The idea of objective justice and human values stands above facts, which *per se* do not generate law-creating effects; *ex conscientia jus oritur*. The imperative of the realization of justice prevails over manifestations of a State's "will" (*ibid.*, pp. 191-192, paras. 64 and 66). My position, in the realm of provisional measures of protection, has been a consistently anti-voluntarist one[6]. Conscience stands above the "will".

27. Subsequently, in my separate opinion in the Court's Order of 22 April 2015 in the same case of the *Seizure and Detention of Certain Documents and Data*, I went on to sustain that also in the present domain, the ICJ is master of its own jurisdiction. Within the *autonomous legal regime* of provisional measures of protection the Court can thus "take a

[6] Cf., to this effect, e.g., my separate opinion (paras. 79-80) in the case of the *Application of the ICSFT Convention and of the CERD Convention (Ukraine* v. *Russian Federation)* (Order of 19 April 2017, *infra*). And cf., in the same sense, for my criticisms of the voluntarist conception: A. A. Cançado Trindade, *Le droit international pour la personne humaine*, Paris, Pedone, 2012, pp. 115-136; A. A. Cançado Trindade, *Los Tribunales Internacionales Contemporáneos y la Humanización del Derecho Internacional*, *op. cit. supra* note 2, pp. 69-77; A. A. Cançado Trindade, *Os Tribunais Internacionais e a Realização da Justiça*, 2nd rev. ed., *op. cit. supra* note 2, pp. 176-178 and 314-316.

more proactive posture (under Article 75 (1) and (2) of its Rules), in the light also of the principle of the juridical equality of States", remaining attentive to the *legal nature* and the *effects* of such provisional measures (*I.C.J. Reports 2015 (II)*, pp. 562-564, paras. 3-4 and 7, and cf. paras. 5-6). And I concluded that

> "Advances in this domain cannot be achieved in pursuance of a voluntarist conception of international law in general, and of international legal procedure in particular. The requirements of objective justice stand above the options of litigation strategies.
>
> . . . . . .
>
> And the Court is fully entitled to decide thereon [on provisional measures], without waiting for the manifestations of the 'will' of a contending State party. It is human conscience, standing above the 'will', that accounts for the progressive development of international law. *Ex conscientia jus oritur*." (*Ibid.*, pp. 565-566, paras. 11 and 13.)

V. Transposition of Provisional Measures of Protection from Comparative Domestic Procedural Law onto International Legal Procedure

28. May I now turn to my own examination, in particular, of the distinct aspects of provisional measures of protection to be taken into account. In effect, I have been conceptualizing, along the years, in my individual opinions and writings, what I have been calling the *autonomous legal regime* of provisional measures of protection[7], during this last decade on successive occasions here in the ICJ, and in earlier years in the Inter-American Court of Human Rights (IACtHR). As I have been dedicating myself considerably to the evolution of provisional measures of protection in contemporary international law, I feel obliged to retake the examination of the matter in logical sequence, now in the factual context of the present case of *Alleged Violations of the 1955 Treaty of Amity*.

29. The first point to be considered to the effect of the gradual consolidation of such autonomous legal regime is the historical transposition of provisional measures from the domestic legal systems to the international

[7] Cf. A. A. Cançado Trindade, *Evolution du droit international au droit des gens — L'accès des particuliers à la justice internationale: le regard d'un juge*, Paris, Pedone, 2008, pp. 64-70; A. A. Cançado Trindade, "La Expansión y la Consolidación de las Medidas Provisionales de Protección en la Jurisdicción Internacional Contemporánea", *Retos de la Jurisdicción Internacional* (eds. S. Sanz Caballero and R. Abril Stoffels), Cizur Menor/Navarra, Cedri/CEU/Thomson Reuters, 2012, pp. 99-117; A. A. Cançado Trindade, *El Ejercicio de la Función Judicial Internacional — Memorias de la Corte Interamericana de Derechos Humanos*, 5th rev. ed., Belo Horizonte, Edit. Del Rey, 2018, Chapters V and XXII (provisional measures of protection), pp. 47-52 and 199-208; A. A. Cançado Trindade, "Les mesures provisoires de protection dans la jurisprudence de la Cour interaméricaine des droits de l'homme", in *Mesures conservatoires et droits fondamentaux* (eds. G. Cohen-Jonathan and J.-F. Flauss), Brussels, Bruylant/Nemesis, 2005, pp. 145-163.

legal order, with all its implications. I addressed this point in my dissenting opinion (paras. 5-7) in the case of *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal)* [hereinafter *Obligation to Prosecute or Extradite*], Order of 28 May 2009, as well as in my separate opinion in the case of the *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the* Temple of Preah Vihear (Cambodia *v.* Thailand) *(Cambodia* v. *Thailand)*, Order of 18 July 2011 (para. 64).

30. I singled out therein that *precautionary* measures of comparative domestic procedural law inspired *provisional* measures in international procedural law. This conceptualization still needed to free itself from a certain juridical formalism, leaving at times the impression of taking the process as an end in itself, rather than as a means for the realization of justice. In the domestic legal order, the precautionary process sought to safeguard the effectiveness of the jurisdictional function itself, rather than the subjective right *per se*.

31. The transposition of provisional measures from the domestic to the international legal order (in international arbitral and judicial practice) had the effect of expanding the domain of international jurisdiction[8]. In effect, in international law, it is the *raison d'être* of provisional measures of protection to prevent and avoid irreparable harm in situations of gravity (with imminence of an irreparable harm) and urgency. Provisional measures are *anticipatory* in nature, disclosing the preventive dimension of the safeguard of rights. Law itself is anticipatory in this domain.

VI. Juridical Nature of Provisional Measures of Protection

32. Shortly afterwards, in my dissenting opinion in the (merged) cases of *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua* v. *Costa Rica), Provisional Measures, Order of 16 July 2013* (*I.C.J. Reports 2013*, p. 256, para. 38 and pp. 268-269, para. 73), I pointed out that, as time went on, the growing case law of distinct international tribunals on provisional measures sought to clarify their *juridical nature*, while stressing their essentially preventive character. In face of the likelihood or probability of *irreparable harm* and the *urgency* of a situation, whenever provisional measures were ordered to protect rights of a growing number of people (or as in cases concerning armed conflicts), they have appeared endowed with a character,

[8] P. Guggenheim, "Les mesures conservatoires dans la procédure arbitrale et judiciaire", 40 *Recueil des cours de l'Académie de droit international de La Haye* (1932), pp. 649-763, and cf. pp. 758-759; P. Guggenheim, *Les mesures provisoires de procédure internationale et leur influence sur le développement du droit des gens*, Paris, Libr. Rec. Sirey, 1931, pp. 15, 174, 186, 188 and 14-15, and cf. pp. 6-7 and 61-62.

more than precautionary, truly *tutelary*, besides safeguarding the rights at stake[9].

33. In my following separate opinion in the case of *Certain Activities/Construction of a Road*, Order of 22 November 2013 (*I.C.J. Reports 2013*, pp. 380-381, paras. 25-26), I have again recalled the transposition of provisional measures of protection from legal proceedings in comparative domestic procedural law onto the international legal procedure (cf. *supra*), and their juridical nature and effects. In evolving from *precautionary* to *tutelary*, I further pondered, they contribute to the progressive development of international law, being directly related to the realization of justice itself[10].

34. Later on, as the ICJ pronounced again on the merged cases of *Certain Activities/Construction of a Road* (this time its Judgment of 16 December 2015), I presented a new separate opinion, wherein I stressed (*I.C.J. Reports 2015 (II)*, pp. 761-762, paras. 7-9) that the aforementioned evolution of provisional measures of protection turned attention from the legal process itself to the subjective rights *per se*, thus freeing themselves from the juridical formalism of the past. After all, such formalism conveyed the impression of taking the legal process as an end in itself, rather than as a means for the realization of justice.

VII. The Evolution of Provisional Measures of Protection

35. The *rationale* of provisional measures stood out clearer: they were no longer seen as a *precautionary legal action* (*mesure conservatoire/acción*

[9] Cf. R. St. J. MacDonald, "Interim Measures in International Law, with Special Reference to the European System for the Protection of Human Rights", 52 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* (1993), pp. 703-740; A. A. Cançado Trindade, "Les mesures provisoires de protection dans la jurisprudence de la Cour interaméricaine des droits de l'homme", *Mesures conservatoires et droits fondamentaux* (eds. G. Cohen-Jonathan and J.-F. Flauss), Brussels, Bruylant/Nemesis, 2005, pp. 145-163; R. Bernhardt (ed.), *Interim Measures Indicated by International Courts*, Berlin/Heidelberg, Springer-Verlag, 1994, pp. 1-152; A. Saccucci, *Le Misure Provvisorie nella Protezione Internazionale dei Diritii Umani*, Torino, Giappichelli Ed., 2006, pp. 103-241 and 447-507; and cf. also E. Hambro, "The Binding Character of the Provisional Measures of Protection Indicated by the International Court of Justice", *Rechtsfragen der Internationalen Organisation — Festschrift für H. Wehberg* (eds. W. Schätzel and H.-J. Schlochauer), Frankfurt a/M, 1956, pp. 152-171. Provisional measures have been increasingly ordered, in recent years, by international as well as national tribunals; cf. E. García de Enterria, *La Batalla por las Medidas Cautelares*, 2nd rev. ed., Madrid, Civitas, 1995, pp. 25-385; and L. Collins, "Provisional and Protective Measures in International Litigation", 234 *Recueil des cours de l'Académie de droit international de La Haye* (1992), pp. 23, 214 and 234.

[10] As I pointed out in another international jurisdiction: cf. A. A. Cançado Trindade, "Preface by the President of the Inter-American Court of Human Rights", *Compendium of Provisional Measures* (June 1996-June 2000), Vol. 2, Series E, San José of Costa Rica, IACtHR, 2000, pp. VII-XVIII, and sources referred to therein.

cautelar, as in the domestic legal systems), but rather as a jurisdictional guarantee of subjective rights, thus being truly *tutelary*, and coming closer to reaching their plenitude. I added that, when their basic requisites — of gravity and urgency, and the needed prevention of irreparable harm — are met, they have been ordered (by international tribunals), in the light of the needs of protection, and have thus conformed a true *jurisdictional guarantee of a preventive character*.

36. Subsequently, I have retaken the examination of the matter in my separate opinion in the *Application of the ICSFT Convention and of the CERD Convention (Ukraine* v. *Russian Federation)*, Order of 19 April 2017 (*I.C.J. Reports 2017*, p. 157, para. 4 and pp. 181-182, paras. 74-76). I summarized the component elements of the autonomous legal regime of provisional measures of protection, observing that

> "Such legal regime is configured by the *rights* to be protected (not necessarily identical to those vindicated later in the merits stage), by the *obligations* emanating from the provisional measures of protection, generating autonomously State *responsibility*, with its legal consequences, and by the presence of (potential) victims already at the stage of provisional measures of protection." (*Ibid.*, p. 181, para. 74.)

37. I then observed that the claimed rights to be protected in the *cas d'espèce* encompassed "the fundamental rights of human beings, such as the right to life, the right to personal security and integrity, the right not to be forcefully displaced or evacuated from one's home" (*ibid.*, para. 75). And I added that the duty of compliance with provisional measures of protection (another element configuring their autonomous legal regime) keeps on calling for further elaboration, as non-compliance with them generates *per se* State responsibility and entails legal consequences (*ibid.*, pp. 181-182, para. 76).

38. More recently, in my separate opinion (*I.C.J. Reports 2017*, pp. 256-257, paras. 24-25) in the case of *Jadhav (India* v. *Pakistan)*, Order of 18 May 2017, I have reiterated my understanding that provisional measures of protection are endowed with a juridical autonomy of their own, as sustained in my individual opinions in successive cases within the ICJ (and, earlier on, within the IACtHR)[11], thus contributing to its conceptual elaboration in the jurisprudential construction on the matter. I have recalled that I soon identified

> "the component elements of such autonomous legal regime, namely: the rights to be protected, the obligations proper to provisional measures of protection; the prompt determination of responsibility (in case

[11] Cf. note 15, *infra*.

of non-compliance), with its legal consequences; the presence of the victim (or potential victim, already at this stage), and the duty of reparations for damages" (*I.C.J. Reports 2017*, pp. 256-257, para. 24)[12].

39. I have then drawn attention, in the same separate opinion in the *Jadhav* case, to the presence of rights of States and of individuals together in the proceedings in contentious cases before the ICJ, despite their keeping on being strictly inter-State ones (by attachment to an outdated dogma of the past). I added that this in no way impedes that the beneficiaries of protection in given circumstances are the human beings themselves, individually or in groups (*ibid.*, p. 257, para. 25).

40. I had pointed this out also, e.g., in my dissenting opinion in the case concerning *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal)* (Order of 28 May 2009), and in my separate opinion in the case of *Application of the ICSFT Convention and of the CERD Convention (Ukraine* v. *Russian Federation)* (Order of 19 April 2017)[13] (cf. *supra*). The evolution here examined is to be approached within a wider conceptual framework.

41. The needed conformation of the *autonomous legal regime* of provisional measures of protection[14] is a significant point that I have been consistently sustaining in several (more than twenty) of my individual opinions, successively within two international jurisdictions, in the period 2000-2018[15]. One of the aspects I have been singling out — including in my aforementioned dissenting opinion in an ICJ's Order (of 16 July 2013) at an early stage of the handling of two merged cases opposing two Cen-

[12] In my understanding, rights and obligations concerning provisional measures of protection are not necessarily the same as those pertaining to the merits of the cases, and the configuration of responsibility with all its legal consequences is prompt, without waiting for the decision on the merits of the cases.

[13] Cf. also, on the same jurisprudential construction, my separate opinion in the case *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010 (II)*.

[14] Cf. A. A. Cançado Trindade, *O Regime Jurídico Autônomo das Medidas Provisórias de Proteção*, The Hague/Fortaleza, IBDH/IIDH, 2017, pp. 13-348.

[15] Such individual opinions on the matter are reproduced in the collections: *(a) Judge Antônio A. Cançado Trindade — The Construction of a Humanized International Law — A Collection of Individual Opinions (1991-2013)*, Vol. I (IACtHR), Leiden, Brill/Nijhoff, 2014, pp. 799-852; Vol. II (ICJ), Leiden, Brill/Nijhoff, 2014, pp. 1815-1864; Vol. III (ICJ), Leiden, Brill/Nijhoff, 2017, pp. 733-764; and *(b) Vers un nouveau jus gentium humanisé — Recueil des opinions individuelles du Juge Antônio A. Cançado Trindade [CIJ]*, Paris, L'Harmattan, 2018, pp. 143-224 and 884-886; and *(c) Esencia y Transcendencia del Derecho Internacional de los Derechos Humanos (Votos [del Juez A. A. Cançado Trindade] en la Corte Interamericana de Derechos Humanos, 1991-2008)*, Vols. I-III, 2nd rev. ed., Mexico D.F., Ed. Cám. Dips., 2015, Vol. III, pp. 77-399.

tral American States, and very recently in my separate opinion in the case of the *Application of the Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v. *United Arab Emirates)*, Order of 23 July 2018) (*I.C.J. Reports 2018 (II)*, pp. 460-462, paras. 74-77, p. 464, para. 82, pp. 466-467, paras. 89-93 and p. 469, para. 102) — has been that the notion of victim (or of *potential* victim[16]), or injured party, can emerge also in the context proper to provisional measures of protection, irrespective of the decision as to the merits of the case[17].

VIII. Provisional Measures of Protection and the Preventive Dimension of International Law

42. The moving towards the consolidation of the autonomous legal regime of provisional measures of protection, in my perception, gradually enhances the preventive dimension of international law. In doing so, contemporary international tribunals give a relevant contribution to the avoidance or prevention of irreparable harm in situations of urgency, to the ultimate benefit of human beings, and to secure due compliance with the ordered provisional measures of protection[18].

43. The anticipatory or preventive character of provisional measures of protection has brought to the fore the temporal dimension in their application. In effect, provisional measures have, in recent years, been extending protection to growing numbers of persons in situations of vulnerability (*potential* victims), transformed into a true jurisdictional *guarantee* of a preventive character[19].

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[16] On the notion of *potential* victims in the framework of the evolution of the notion of victim or the condition of the complainant in the domain of the international protection of human rights, cf. A. A. Cançado Trindade, "Co-existence and Co-ordination of Mechanisms of International Protection of Human Rights (At Global and Regional Levels)", 202 *Recueil des cours de l'Académie de droit international de La Haye* (1987), Chapter XI, pp. 243-299, esp. pp. 271-292.

[17] Cf. (merged) cases of *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua* v. *Costa Rica), Provisional Measures, Order of 16 July 2013, I.C.J. Reports 2013*, dissenting opinion of Judge Cançado Trindade, p. 269, para. 75.

[18] Cf., to this effect, *ibid., Order of 22 November 2013, I.C.J. Reports 2013*, separate opinion of Judge Cançado Trindade, pp. 378-385, paras. 20-31 and p. 387, para. 40. The right of access to justice, also in the present domain (cf. para. 68, *supra*), is to be understood *lato sensu*, encompassing not only the formal access to a competent tribunal, but also the due process of law (equality of arms), and the faithful compliance with the decision; for a general study, cf. A. A. Cançado Trindade, *El Derecho de Acceso a la Justicia en Su Amplia Dimensión*, 2nd ed., Santiago de Chile, Ed. Librotecnia, 2012, pp. 79-574; A. A. Cançado Trindade, *The Access of Individuals to International Justice*, Oxford University Press, 2011, pp. 1-236.

[19] Cf. A. A. Cançado Trindade, *Tratado de Direito Internacional dos Direitos Humanos*, Vol. III, Porto Alegre, S.A. Fabris Ed., 2003, pp. 80-83.

44. Hence the autonomy of the international responsibility that non-compliance with them promptly generates, another component element of the legal regime of their own (cf. *supra*). Consideration of the matter also brings to the fore the general principles of law, always of great relevance[20], as well as the common mission of contemporary international tribunals of realization of justice as from an essentially humanist outlook[21].

IX. Provisional Measures of Protection and Continuing Situations of Human Vulnerability

45. Still in my aforementioned separate opinion in the case of the *Application of the CERD Convention (Qatar* v. *United Arab Emirates)*, Order of 23 July 2018, I have drawn attention to the fact that there have been requests to the ICJ of provisional measures of protection, like in the *cas d'espèce*, which were intended to put an end to a *continuing situation* of vulnerability of the affected persons (potential victims). Earlier on, there was a *continuing situation* of lack of access to justice of the victims of the Hissène Habré regime (1982-1990) in Chad, in the case concerning the *Obligation to Prosecute or Extradite (Belgium* v. *Senegal)* (Order of 2009, cf. *supra*).

46. In the case of *Jurisdictional Immunities of the State (Germany* v. *Italy)*, as the ICJ, in its Order of 6 July 2010 found the counter-claim of Italy inadmissible, once again I appended thereto a dissenting opinion, wherein I examined at depth the notion of *"continuing situation"*, the origins of a "continuing situation" in international legal doctrine, its configuration in international litigation and case law as well as in international legal conceptualization at normative level.

47. Moreover, a *continuing situation* in breach of human rights has had an incidence at distinct stages of the proceedings before the ICJ: in addition to decisions on provisional measures and counter-claim *(supra)*, it has also been addressed in decisions as to the merits. For example, the factual context of the case of *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)*, disclosed a *continuing situation* of

[20] Cf., e.g., *inter alia*, A. A. Cançado Trindade, *Princípios do Direito Internacional Contemporâneo*, 2nd rev. ed., Brasília, FUNAG, 2017, pp. 25-454; A. A. Cançado Trindade, "Foundations of International Law: The Role and Importance of Its Basic Principles", *XXX Curso de Derecho Internacional Organizado por el Comité Jurídico Interamericano* (2003), Washington D.C., General Secretariat of the OAS, 2004, pp. 359-415.

[21] A. A. Cançado Trindade, *Os Tribunais Internacionais e a Realização da Justiça,* 2nd rev. ed., *op. cit. supra* note 2, pp. 29-468; and cf. A. A. Cançado Trindade, *A Visão Humanista da Missão dos Tribunais Internacionais Contemporâneos*, The Hague/Fortaleza, IBDH/IIDH, 2016, pp. 11-283; A. A. Cançado Trindade, *Los Tribunales Internacionales Contemporáneos y la Humanización del Derecho Internacional*, *op. cit. supra* note 2, pp. 7-185.

breaches of Mr. A. S. Diallo's individual rights in the period extending from 1988 to 1996, marked by the prolonged lack of access to justice.

48. In the present case of *Alleged Violations of the 1955 Treaty of Amity*, the issue of a continuing situation marked presence again, though not much dwelt upon by the Contending Parties in the course of the present proceedings on provisional measures of protection. Yet, at one moment of such proceedings, in the public hearings of 27 August 2018, counsel for the Applicant State has stated that the ICJ has been seized of a *"fait illicite continu"* which, in case it persists, can "perpetuate and widen the harm"[22].

49. The ICJ, for its part, in the Order of provisional measures of protection it has just adopted in the *cas d'espèce*, has pondered that the sanctions imposed by the Respondent State as from 8 May 2018 appear to have already had an impact and consequences of a "continuing nature" (Order, para. 88). The "situation resulting" therefrom, it added, "is ongoing" and "there is no prospect of improvement" (*ibid.*, para. 93). Hence the needed provisional measures of protection that the Court has just indicated in the present Order.

50. This is not my first separate opinion wherein I address the relevance of provisional measures of protection in continuing situations of vulnerability. Very recently I have examined this aspect at depth, in my separate opinion in the case of *Application of the CERD Convention (Qatar* v. *United Arab Emirates)*, Order of 23 July 2018 (*I.C.J. Reports 2018 (II)*, pp. 464-467, paras. 82-93); suffice it to refer to it herein. In respect to human vulnerability in the present domain, may I now move on to my humanitarian considerations.

X. Human Vulnerability: Humanitarian Considerations

51. In the domain of provisional measures of protection, human vulnerability assumes particular importance. I have drawn attention to this relevant point in my separate opinion in the aforementioned case of the *Application of the ICSFT Convention and of the CERD Convention (Ukraine* v. *Russian Federation)*, Order of 19 April 2017) (paras. 12-44 and 62-67), as well as in in my separate opinion (paras. 68-73) in the also aforementioned case of the *Application of the* CERD *Convention (Qatar* v. *United Arab Emirates)*, Order of 23 July 2018).

52. In historical perspective, there have always been, along the centuries, thinkers warning against the vulnerability of human beings in face of extreme violence and destruction. May I recall that, in ancient Greece, for

[22] CR 2018/16, of 27 August 2018, p. 76, para. 37 (Thouvenin).

example, this concern marked presence in the tragedies written by Aeschylus, Sophocles and Euripides, singling out cruelty, human vulnerability and loneliness. The tragedian Euripides, for example, proceeded to the denunciation of the devastation and human suffering caused by war. In one of his latest tragedies, *Helen* (412 BC), for example, the chorus sang:

> "All of you are mad, all who win glory in war
> by stabbing and thrusting with spears,
> clumsily trying to resolve your troubles in death.
> If the contest of blood is the judge, there will never
> be an end to the conflicts between cities, between humans (. . .)
> [Y]ou cause sufferings upon sufferings
> in a miserable, lamentable welter of catastrophe."[23]

53. Ancient Greek tragedies kept on being performed, and even rewritten by successive authors, throughout the centuries. Of all Greek tragedies, the one probably most rewritten and performed in different times has been Sophocles's *Antigone* (442-441 BC), for having been perceived by successive authors along the centuries as portraying the persisting tension between *raison d'Etat* and dictates of justice in the line of jusnaturalist thinking. Antigone was guided by her conscience (in caring to bury her deceased brother Polynices, and thus determining her tragic destiny), while the despotic ruler Creon was moved by his will in the exercise of power.

54. The prevalence of human conscience over the will, of jusnaturalism over legal positivism, marked presence [was advanced] in Euripides's tragedy *Hecuba* (424 BC) as well. Hecuba, turned non-citizen and enslaved, appeals to natural law, rather than positive law, to surpass cruelty not hindered by a positivist outlook. Both Sophocles's *Antigone (supra)* and Euripides's *Hecuba* claim the primacy of natural law over unjust decree and revenge. For her part, in a moment of her lamentation/plea, Hecuba asserts/pleas that

> "we slaves are weak. But the gods and
> the principle of law that rules them are strong.
> Upon this moral law the world depends,

[23] Verses 1151-1155 and 1161-1162. Earlier on, in another tragedy by Euripides, *Hippolytus* (428 BC), the chorus sang:

> "When I think of God's care for man
> it lightens my pain, but understanding,
> concealed by hope, eludes me
> when I see what happens to men and what they do.
> From one place then another things come and go,
> men's lives shift about, wander here and there." (Verses 1105-1110.)

through it the gods exist, by it we live,
distinguishing clearly good and evil."[24]

55. Athenian tragedies have survived from ancient times to nowadays, along the centuries. From the thirteenth to the nineteenth centuries, the vulnerability of human beings in face of human cruelty and destruction (as portrayed by ancient Greek tragedians), became the object of continuing attention of theologians and philosophers. It should not pass unnoticed that many concepts of the law of nations appeared first in theology, then moving onto *jus gentium (droit des gens)* at the time of its "founding fathers" (in the sixteenth and seventeenth centuries).

56. Some points of their reflections (constructed in the realms of theology, philosophy and literature) were carefully systematized, in the early twentieth century, by A.-D. Sertillanges, in his masterful anthology *Les vertus théologales* (Vols. I-III, 1913). Thinkers of those centuries revealed awareness that, given the brief time of each one's life in this world, and the fact that we do not know where we came from nor where we are going to, everyone should avoid evil and search for good[25].

57. It is the conscience of the sense of human dignity that leads to the good, prevailing over evil. As we cannot remain imprisoned by the *raison d'Etat*, we keep in mind the principles that account for the advances of civilization. The slow evolution of humankind as a whole counts on human conscience and basic principles, as well as the ideal of justice[26]. One cannot impose suffering upon foreigners, or vulnerable persons. Revenge is to be discarded, and one is to care about the others on a universal scale, for the sake of the unity of humankind, in the line of natural law thinking[27].

58. In effect, the lessons from the ancient Greek tragedies have remained topical and perennial to date. Some 24 centuries after they were written and performed, thinkers kept on writing on human suffering in face of cruelty, at times as if being in search of salvation for humankind[28]. In the nineteenth century, for example, L. Tolstoy — always sensitive to conscience against injustice and evil[29] — warned, through one of his characters, in his classic *Anna Karenina* (1877-1878), that

"On the one hand war is such a bestial, cruel and terrible affair, that no single man (. . .) can take on himself personally the responsi-

[24] Verses 797-801.

[25] Cf. A.-D. Sertillanges, *Les vertus théologales*, Vol. I, Paris, Libr. Renouard H. Laurens Edit., 1913, pp. 76-77 and 179.

[26] *Ibid.*, pp. 180-181; and Vol. II, pp. 155 and 170.

[27] *Ibid.*, Vol. III, pp. 23, 139, 145, 151-154 and 156-157.

[28] Cf. G. Steiner, *Tolstoy ou Dostoevsky* [1959], São Paulo, Ed. Perspectiva, 2006, p. 31.

[29] Cf. S. Zweig, *Tolstoï* [1939], Paris, Buchet-Chastel, 2017, pp. 19, 76, 81, 88, 188 and 193-195.

> bility for beginning a war. It can only be done by a Government, which is summoned to it and is brought to it inevitably. On the other hand, by law and by common sense, in the affairs of State and especially in the matter of war, citizens renounce their personal will."[30]

59. For his part, F. Dostoevsky, in his classic *The Karamazov Brothers* (1879-1880), warned that "the idea of the service of humanity, of brotherly love and the solidarity of mankind, is more and more dying out in the world, and indeed this idea is sometimes treated with derision"[31]. Both Tolstoy and Dostoevsky, among others, were sensitive to, and warned against, the infliction of human suffering. In effect, the concern with human cruelty has remained present throughout the centuries. Despite warnings of the kind, lessons have not been learned from the past.

60. The human capacity for devastation or destruction has become unlimited in the twentieth and twenty-first centuries (with weapons of mass destruction, in particular nuclear weapons). The decades along the whole twentieth century, added to the first two decades of the twenty-first century, have been the time of successive genocides, crimes against humanity, massacres and atrocities of all kinds, with millions of fatal victims, as never before in human history. But this does not need to lead to despair, as it has also been the time of the growth of international justice, with the endeavours of contemporary international tribunals to adjudicate cases pertaining to those evil actions[32].

61. It should not pass unnoticed that human vulnerability here, in relation to the factual context of the present case of *Alleged Violations of the 1955 Treaty of Amity*, encompasses the whole international community, indeed humankind as a whole, in face of the deadliness of nuclear weapons. There is a great need not only of their non-proliferation, but also and ultimately of nuclear disarmament, as a universal obligation.

62. I have addressed this issue at length in my three extensive dissenting opinions in the recent Judgments of the ICJ (of 5 October 2016) in the three cases on *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands* v. *United Kingdom, India* and *Pakistan)* [hereinafter *Obligations of Nuclear Disarmament*]. I devoted one part (Part VIII) of my three dissenting opinions to the consideration of the fact that the presence of evil has marked human existence along the centuries.

63. Neither theology, nor psychology, nor philosophy, have succeeded in providing answers or persuasive explanation of the persistence of evil

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[30] L. Tolstoy, *Anna Karenina*, [London], Wordsworth Ed., 1999, pp. 793-794.

[31] F. Dostoevsky, *The Brothers Karamazov*, [London], Wordsworth Ed., 2009, p. 347.

[32] Cf., e.g., A. A. Cançado Trindade, *State Responsibility in Cases of Massacres: Contemporary Advances in International Justice*, Utrecht, Universiteit Utrecht, 2011, pp. 1-71; A. A. Cançado Trindade, *La Reponsabilidad del Estado en Casos de Masacres — Dificultades y Avances Contemporáneos en la Justicia Internacional*, Mexico, Edit. Porrúa/ Escuela Libre de Derecho, 2018, pp. 1-104.

and cruelty in human conduct. The matter has been addressed at length in literature. But the growing capacity of human beings for destruction in our times has, at least, generated a reaction of human conscience against evil actions, such as mass extermination of innocent or vulnerable and defenceless people, in the form of the elaboration and cultivation and enforcement of *responsibility* for all such evil actions. Here international law has a role to play, without prescinding from the inputs of those other branches of human knowledge.

64. In effect, I have pointed out, in my three dissenting opinions in the aforementioned cases on *Obligations of Nuclear Disarmament*, that, ever since the eruption of the nuclear age in August 1945, some of the world's great thinkers have been inquiring whether humankind has a future (paras. 93-101), and have been drawing attention to the imperative of respect for life and the relevance of humanist values (paras. 102-114). Also in international legal doctrine there have been those who have been stressing the needed prevalence of human conscience, the universal juridical conscience, over State voluntarism (paras. 115-118). After reviewing their writings and reflections, I reiterated my own position, that I have been upholding for years, in the sense that

> "it is the universal juridical conscience that is the ultimate material source of international law. (. . .) [O]ne cannot face the new challenges confronting the whole international community keeping in mind only State susceptibilities; such is the case with the obligation to render the world free of nuclear weapons, an imperative of *recta ratio* and not a derivative of the 'will' of States. In effect, to keep hope alive it is necessary to bear always in mind humankind as a whole." (Para. 119.)

XI. Beyond the Strict Inter-State Outlook: Attention to Peoples and Individuals

65. The present ICJ's Order of provisional measures of protection in the case of *Alleged Violations of the 1955 Treaty of Amity* is not the first one to consider, together with State rights, also rights of individuals. Earlier on, for example, in my separate opinion in the case of *Application of the ICSFT Convention and of the CERD Convention (Ukraine* v. *Russian Federation)*, Order of 19 April 2017), I dedicated one part (Part VIII) of it to the protection by means of provisional measures of the human person, beyond the strict inter-State dimension (paras. 56-61). Shortly afterwards, in my separate opinion in the case of *Jadhav (India* v. *Pakistan)*, Order of 18 May 2017, I devoted one of its parts (Part III) to the presence of rights of States and of individuals together (paras. 12-15).

66. In effect, nowadays one cannot behold only States, but also — and mainly — peoples and human beings, for whom States were created. The "founding fathers" of the law of nations *(droit des gens)*, from the sixteenth century onwards, duly kept them in mind[33]. In the twentieth century, writing during the Second World War (1939-1944), and keeping in mind "totalitarian" State policies at the time, J. Maritain sustained, in the line of natural law thinking, that the human person with conscience transcends the State, and has the right to take decisions concerning his or her own destiny[34].

67. In his conceptualization of personalism, he warned that the problem of human evil is thus to keep on being studied at a greater depth. To him, evil actions are connected with *voluntas*, and can only be resisted and condemned in conformity with *recta ratio*. Ancient Greek thinkers (cf. *supra*) were already aware that a life of reflection is more valuable or superior to only active life; and still during the time of the Second World War (in 1944), Maritain was calling for a new era of a needed and integral humanism[35]. I have addressed this particular point also in another international jurisdiction[36].

68. As to contemporary law of nations (after the Second World War), may it be recalled that the 1945 UN Charter itself, as adopted in one of the rare moments — if not glimpses — of lucidity in the twentieth century, followed three years later by the 1948 Universal Declaration of Human Rights, proclaimed, in its preamble, the determination of "the *peoples* of the United Nations" to "*save succeeding generations* from the scourge of war", and, to that end, to "live together in peace with each other as good neighbours". The draftsmen of the UN Charter made a point of making it refer to peoples — rather than States — of the United

[33] Cf. A. A. Cançado Trindade, "La Perennidad del Legado de los 'Padres Fundadores' del Derecho Internacional", 13 *Revista Interdisciplinar de Direito da Faculdade de Direito de Valença* (2016), No. 2, pp. 15-43; A. A. Cançado Trindade, "Prefácio: A Visão Universalista e Humanista do Direito das Gentes: Sentido e Atualidade da Obra de Francisco de Vitoria", in: Francisco de Vitoria, *Relectiones — Sobre os Indios e sobre o Poder Civil*, Brasília, Edit. Universidade de Brasília/FUNAG, 2016, pp. 19-51.

[34] Cf. J. Maritain, *Los Derechos del Hombre y la Ley Natural* [1939-1945], Buenos Aires, Edit. Leviatan, 1982 (reed.), pp. 66, 69 and 79-82; and cf. also J. Maritain, *De Bergson a Santo Tomás de Aquino — Ensayos de Metafísica y Moral* [1944], Buenos Aires, Ed. Club de Lectores, 1983, pp. 213-214, 224 and 248; J. Maritain, *Natural Law — Reflections on Theory and Practice* [1943], (ed. W. Sweet), South Bend/Indiana, St. Augustine's Press, 2001, pp. 8, 20, 23, 25-26, 32-34, 48-49, 51, 54, 63 and 67.

[35] Cf. J. Maritain, *Humanisme intégral* [1936], Paris, Aubier, 2000, p. 18, and cf. pp. 37 and 229-232; J. Maritain, *Para una Filosofía de la Persona Humana* [1936], Buenos Aires, Ed. Club de Lectores, 1984, pp. 169, 206-207 and 221.

[36] Cf. IACtHR, case of *La Cantuta* v. *Peru* (interpretation of judgment of 30 November 2007), separate opinion of Judge A. A. Cançado Trindade, paras. 15-16.

Nations. The UN Charter, as from the moment of its adoption, surpassed the strictly reductionist inter-State outlook[37].

69. As to the *cas d'espèce*, it should not pass unnoticed that the 1955 Treaty of Amity refers, *inter alia*, to the obligation of each State Party to care for "the health and welfare of its people" (Art. VII (1)). It also addresses the obligations of the two States Parties always to "accord fair and equitable treatment to nationals and companies" of each other, thus refraining from applying "discriminatory measures" (Art. IV (1)). Stressing this point, it further refers to the obligation of the two States Parties to accord fair treatment to their "nationals and companies", without discriminatory measures (Art. IX (2)(3))[38].

XII. Continuing Risk of Irreparable Harm

70. In the *cas d'espèce*, extraterritorial sanctions again imposed by the United States upon Iran, as from 6 August 2018, with its withdrawal from the JCPOA (in addition to further sanctions to take effect as from 4 November 2018) *already* have an impact on Iran's position at international level and on its economic situation and that of its nationals and Iranian companies. As reported to the Court in the course of the present proceedings, the investments they made risk being worthless and the value of their currency has *already* dropped significantly[39], foreign companies have announced the termination of their commercial activities in the country[40], where unemployment is *already* very high[41].

71. Iranian nationals are at risk of being in an increasingly difficult situation, as their economic condition continues to worsen, given the sanctions imposed by the United States, and will further deteriorate as further sanctions are soon (next November) to be applied. This means that the ability of the Iranian people to access simple products and services is at stake, such as their ability to buy food and essential living products[42], and to access medication and health services[43]. There is here a continuing and growing risk of irreparable harm.

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[37] Cf. A. A. Cançado Trindade, [Key-Note Address: Some Reflections on the Justiciability of the Peoples' Right to Peace — Summary], in UN, "Report of the Office of the High Commissioner for Human Rights on the Outcome of the Expert Workshop on the Right of Peoples to Peace" (2009), doc. A/HRC/14/38 of 17 March 2010, pp. 9-11.

[38] It refers as well to "freedom of commerce" (Art. X (1)).

[39] Iran's Request for provisional measures, p. 16, para. 36, note 50.

[40] *Ibid.*, p. 12, note 28 and note 38.

[41] *Ibid.*, p. 11, para. 26, note 34.

[42] *Ibid.*, p. 13, para. 30, note 41.

[43] Application instituting proceedings, p. 15, para. 37, note 54.

XIII. Continuing Situation Affecting Rights and the Irrelevance of the Test of Their So-Called "Plausibility"

72. In the present separate opinion, I have already related provisional measures of protection to continuing situations of vulnerability (Part IX), and have then proceeded to develop humanitarian considerations on human vulnerability (Part X) (cf. *supra*). In this respect, there is still another aspect to be here considered. In the present case of *Alleged Violations of the 1955 Treaty of Amity*, there is a continuing situation (of application of sanctions) affecting State and individuals' rights.

73. In a continuing situation of the kind, the rights affected (under the 1955 Treaty of Amity) are certain and clear, and, in my perception, to label them "plausible" has no sense. Even more so when the persons affected remain in a continuing situation of human vulnerability. This is not the first time that I express this concern. In my separate opinion in the ICJ's recent Order of provisional measures of protection (of 23 July 2018), I have warned that

> "The test of so-called 'plausibility' of rights is, in my perception, an unfortunate invention — a recent one — of the majority of the ICJ.
>
> . . . . . .
>
> It appears that each one feels free to interpret so-called 'plausibility' of rights in the way one feels like; this may be due to the fact that the Court's majority itself has not elaborated on what such 'plausibility' means. To invoke 'plausibility' as a new 'precondition', creating undue difficulties for the granting of provisional measures of protection in relation to a *continuing situation*, is misleading, it renders a disservice to the realization of justice." (*I.C.J. Reports 2018 (II)*, pp. 456-457, paras. 57 and 59.)

74. Earlier on, in my separate opinion in the case of *Application of the ICSFT Convention and of the CERD Convention* (Order of 19 April 2017), attentive to the "utmost vulnerability of victims" (*I.C.J. Reports 2017*, pp. 165-169, paras. 27-35) and "the tragedy of human vulnerability" (*ibid.*, pp. 177-178, paras. 62-67), I have strongly criticized the uncertainties of the test of so-called "plausibility" (*ibid.*, pp. 169-170, paras. 37-41), sustaining that, instead of it, it is continuing human vulnerability that paves safely the way for the indication of provisional measures of protection (*ibid.*, p. 169, para. 36 and pp. 170-171, paras. 42-44).

75. Following that, also in my separate opinion in the case of *Jadhav (India* v. *Pakistan)* (Order of 18 May 2017), I have pondered that

> "[t]he right to information on consular assistance is, in the circumstances of the *cas d'espèce*, inextricably linked to the right to life itself,

> a fundamental and non-derogable right, rather than a simply 'plausible' one. This is true not only for the stage of the merits of the case at issue, but also for the stage of provisional measures of protection, endowed with a juridical autonomy of their own" (*I.C.J. Reports 2017*, p. 254, para. 19).

76. In the light of the considerations above, may I here point out, once again, that there was no need for the Court to refer vaguely to "plausibility" or "plausible" rights, in its present Order of provisional measures of protection[44]. The superficiality of such characterization is evident to me, as the rights to be protected here, by means of provisional measures, are quite clear (under the 1955 Treaty), rather than "plausible". It is this certainty, rather than so-called "plausibility", that should have oriented the ICJ to indicate the provisional measures determined in the present Order.

77. In the *cas d'espèce*, like in other cases, the avoidance of referring to "plausibility" would have enhanced the Court's reasoning, rendering it clearer. Particularly in cases, like the present one, where the rights — the protection of which is sought by means of provisional measures — are clearly defined in a treaty, to invoke "plausibility" makes no sense. The legal profession, in also indulging here in so-called "plausibility" (whatever that means), is incurring likewise into absurd uncertainties.

XIV. Considerations on International Security and Urgency of the Situation

78. In their oral pleadings before the Court in the present case of *Alleged Violations of the 1955 Treaty of Amity*, the Contending Parties focused their arguments on submissions relating to the US measures to reimpose sanctions upon Iran (after withdrawal from the JCPOA): in the pleadings, on the one hand the United States sought to ground them on so-called interests and concerns of national security[45], while Iran opposed itself to those "nuclear-related" sanctions allegedly ensuing from national "interests", invoking their harmful effects upon itself and its nationals and its own IAEA commitments[46].

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[44] Cf. paras. 54, 68, 69, 70 and 90.

[45] Cf., on the part of the United States: CR 2018/17, of 28 August 2018, p. 11, paras. 4-5; p. 13, para. 13; p. 17, para. 23; p. 18, paras. 26-27; p. 19, para. 31; p. 20, para. 33; p. 24, para. 6; p. 35, para. 9; p. 37, paras. 17-18; p. 39, paras. 22-23; p. 40, para. 24; p. 48, para. 48; p. 67, paras. 70 and 72; p. 68, para. 73; and cf. also: CR 2018/19, of 30 August 2018, p. 18, paras. 31-32; p. 20, para. 1; p. 26, para. 25; p. 28, para. 29; pp. 37-38, paras. 3, 5 and 8.

[46] Cf., on the part of Iran: CR 2018/16, of 27 August 2018, p. 21, para. 10; p. 25, paras. 22-23; p. 26, para. 27; p. 50, p. 6; p. 63, para. 34; p. 65, para. 42; pp. 74-75, para. 31; and cf. also: CR 2018/18, of 29 August 2018, p. 24, para. 8; p. 25, para. 12; p. 35, para. 1; pp. 36-37, paras. 6-7, 9 and 11-12; p. 38, paras. 12 and 15-16; p. 42, para. 3.

79. In effect, the whole matter brought before the Court in the present proceedings is to be examined bearing in mind international security. Its handling, pertaining to nuclear weapons, is a concern of the international community as a whole. It thus seems rather odd that, in the circumstances of the *cas d'espèce*, international security, though mentioned in Iran's Request for provisional measures (p. 4, para. 10), passed virtually unexplored by the two Contending Parties in their oral arguments during the public hearings before the ICJ.

80. The Joint Comprehensive Plan of Action (JCPOA) has been endorsed by UN Security Council resolution 2231, of 20 July 2015 (Annex A). That resolution affirms, *inter alia*, that the safeguards of the International Atomic Energy Agency (IAEA), as a "fundamental component of nuclear non-proliferation", contribute to the strengthening of the "collective security" of States[47]. In its operative part, Security Council resolution 2231 (2015) restates the concern of previous resolutions of the Security Council not to harm "individuals and entities"[48].

81. International security cannot at all pass unnoticed here. Moreover, Security Council resolution 2231 (2015) further refers to principles of international law and the rights and obligations under the 1968 Treaty on the Non-Proliferation of Nuclear Weapons [NPT] "and other relevant instruments" (para. 27). Among these latter, the international community counts today also on the Treaty on the Prohibition of Nuclear Weapons, adopted on 7 July 2017, and opened to signature at the United Nations on 20 September 2017.

82. This evolution shows that non-proliferation has never been its final stage; beyond it, it is nuclear *disarmament* that can secure the survival of humankind itself as a whole; there is a universal obligation of nuclear disarmament[49]. Nuclear weapons are unethical and unlawful, an affront to humankind. The persistence of modernized arsenals of them in some countries is a cause of great concern and regret of the international community as a whole. National perceptions cannot lose sight of international security.

83. As to the *cas d'espèce*, there are other elements that have been brought to the fore in the present proceedings before the ICJ, pertaining to international security, that are also to be duly taken into account. First, the UN Secretary-General (A. Guterres) issued a statement on 8 May 2018[50],

[47] Preamble, para. 10.

[48] Operative part, paras. 12 and 15, and cf. para. 29.

[49] Cf. A. A. Cançado Trindade, *The Universal Obligation of Nuclear Disarmament*, Brasília, FUNAG, 2017, pp. 41-224; A. A. Cançado Trindade, "A Conferência da ONU sobre o Tratado de Proibição de Armas Nucleares", 44 *Curso de Derecho Internacional Organizado por el Comité Jurídico Interamericano* (2017), Washington D.C., General Secretariat of the OAS, 2017, pp. 11-49.

[50] Cf. Request for provisional measures, p. 4, para. 10, note 15.

wherein he expresses his deep concern with the decision of the United States to withdraw from the JCPOA and to begin reinstating its sanctions. He stresses the great relevance of the JCPOA for nuclear non-proliferation as well as international peace and security, and calls on other JCPOA participants to keep on abiding fully by their respective commitments thereunder, and on all other Member States to keep supporting the agreement[51].

84. Secondly, the IAEA Director General (Y. Amano) also issued a statement, on 9 May 2018, confirming that, as requested by the UN Security Council and authorized by the IAEA Board of Governors in 2015, the IAEA is verifying and monitoring Iran's implementation of its nuclear-related commitments under the JCPOA; he then further confirms that those commitments are being implemented by Iran to date[52].

85. Thirdly, the Governments of France, Germany and the United Kingdom, following the US's decision to withdraw from the JCPOA, issued a press release on 8 May 2018, containing their Joint Statement wherein they regret that US's decision to withdraw, and stress their own continued commitment to the JCPOA. They declare that the JCPOA is binding, recall that it was unanimously endorsed by the Security Council, and urge all sides to commit to its implementation. After noting that Iran has abided by the JCPOA, as confirmed by the IAEA, France, Germany and the United Kingdom urge the United States to stop restricting its implementation, and urge Iran to continue compliance with the agreement, in co-operation with the IAEA[53].

86. And fourthly, as also mentioned in the present oral pleadings before the ICJ[54], the UN Special Rapporteur (I. Jazairy) of the UN Office of the High Commissioner on Human Rights (OHCHR) on the "Negative Impact of the Unilateral Coercive Measures on the Enjoyment of Human Rights", in addressing the extraterritorial sanctions reimposed against Iran "after the unilateral withdrawal of the United States from the nuclear deal, which had been unanimously adopted by the Security Council with the support of the US itself", stated (press release of 22 August 2018) that

> "Sanctions must be just, and must not lead to the suffering of innocent people (. . .). The UN Charter calls for sanctions to be applied only by the UN Security Council (. . .). International sanctions must have

[51] Cf. text of statement reproduced in: *UN News*, of 8 May 2018, pp. 1-2.

[52] Cf. Application instituting proceedings, pp. 4-5, paras. 14 and 16, note 17; CR 2018/16, of 27 August 2018, p. 23, para. 16; CR 2018/18, of 29 August 2018, p. 20, para. 22.

[53] Cf. JCPOA — Joint Statement by France, Germany and the United Kingdom, of 8 May 2018, p. 1. On the indication that the European Union would intensify its efforts to maintain economic relations with Iran, cf. CR 2018/17, of 28 August 2018, p. 62, para. 50.

[54] Cf. CR 2018/16, of 27 August 2018, p. 25, para. 23, note 8.

> a lawful purpose, must be proportional, and must not harm the human rights of ordinary citizens, and none of these criteria is met in this case (. . .). These unjust and harmful sanctions are destroying the economy and currency of Iran, driving millions of people into poverty and making important goods unaffordable."[55]

87. The Special Rapporteur further referred to the 1970 UN Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, which urges States to settle peacefully their differences through dialogue. Subsequently, in another statement (press release of 13 September 2018), the Special Rapporteur outlined again the "need for differences between States to be resolved through peaceful means as advocated by the UN Charter, while avoiding exposing innocent civilians to collective punishment"[56].

88. In his Report of 30 August 2018, the Special Rapporteur focused on the "human rights-related aspects" of the US withdrawal from the JCPOA. He pointed out that the JCPOA was endorsed by Security Council resolution 2231 (2015), which explicitly stressed that UN Member States "were obligated under Article 25 of the Charter of the United Nations to accept and carry out the decisions of the Security Council"[57].

89. He recalled that the ICJ's Advisory Opinion (of 21 June 1971) on *Namibia* (para. 116) asserted that when the Security Council adopts a decision under Article 25 of the UN Charter, "it is for member States to comply with that decision"[58]. And he then examined the consequences of those sanctions, harmful to Iranian nationals, bearing in mind the conventional international legal obligations[59].

90. In the present Order of provisional measures in the case of *Alleged Violations of the 1955 Treaty of Amity*, the ICJ has duly taken into account the *humanitarian needs* of the affected population (in paragraphs 70, 89, 91-92 and 98), so as to secure to it medical supplies and devices and equipment for treatment for chronic disease or preventive care, foodstuffs and agricultural commodities, and maintenance services for civil aviation safety (in paragraph 102 *dispositif*, points 1 and 2).

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[55] Statement reproduced in: UN/OHCHR, press release of 22 August 2018, p. 1.

[56] Statement reproduced in: UN/OHCHR, press release of 13 September 2018, p. 1.

[57] UN Human Rights Council, "Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights", UN doc. A/HRC/39/54, of 30 August 2018, p. 10, para. 31.

[58] *Ibid.*, p. 10, para. 32.

[59] Cf. *ibid.*, pp. 10-13, paras. 33-34 and 37-39.

91. Moreover, in the present separate opinion, I have already pointed out that, in the present Order in the case of *Alleged Violations of the 1955 Treaty of Amity*, as well as in other Orders in previous cases likewise (cf. Part IV, paras. 21-27, *supra*), the ICJ itself has ended up discarding arguments grounded on "national interests", in ordering the needed provisional measures of protection. Yet, in the present Order, may I add, the Court should have been far more attentive to international security than to State susceptibilities as to their own "national security" interests or strategies.

92. In the *cas d'espèce*, the Order of provisional measures of protection has all the more reason and necessity, as the case brought to the Court by Iran concerns nuclear weapons (cf. *supra*), and sanctions reapplied to it by the respondent State, after the US withdrawal from the nuclear agreement (JCPOA) at issue. Among the rights for which provisional measures of protection have here been vindicated, and have been duly ordered by the ICJ, are the rights related to human life and human health, which thus pertain to individuals, to human beings.

XV. Epilogue: A Recapitulation

93. The matter brought to the Court's attention in the factual context of the Request which led to the adoption, by unanimity, of the present Order indicating provisional measures of protection in the case of *Alleged Violations of the 1955 Treaty of Amity (Iran* v. *United States)*, requires, as I have endeavoured to demonstrate in the present separate opinion, much reflection, from a humanist outlook.

94. The fact that the matter at issue in the *cas d'espèce* is being handled on an inter-State basis, characteristic of the *contentieux* before the ICJ, does not mean that the Court is to reason likewise on a strictly inter-state basis. Not at all. It is the nature of a case that will call for a reasoning, so as to reach a solution. The present case of *Alleged Violations of the 1955 Treaty of Amity* concerns not only State rights, but rights of human beings as well.

95. Provisional measures, with their preventive dimension, have been undergoing a significant evolution, moving further towards the consolidation of the *autonomous legal regime* of their own, to the benefit of the *titulaires* of rights (States as well as individuals). With this clarification, may I, last but not least, proceed to a brief recapitulation of the main points I deemed it fit to make, particularly in respect of such provisional measures, in respect of protected rights under the 1955 Treaty of Amity, in the course of the present separate opinion.

96. *Primus*: International treaties, encompassing the 1955 Treaty of Amity, are living instruments, understood on the basis of circumstances in which they are to be applied. *Secundus*: In their interpretation and application, their object and purpose are to be kept in mind. Their evolu-

tionary interpretation ensuing therefrom has contributed to the progressive development of international law.

97. *Tertius*: In ordering provisional measures of protection, the ICJ (and other international tribunals), even when faced with allegations of "national security interests", pursues, on the basis of its Statute and *interna corporis*, its mission of realization of justice. *Quartus*: This is confirmed by the ICJ's relevant *jurisprudence constante*. Prima facie jurisdiction is autonomous from jurisdiction on the merits, as acknowledged also by a more lucid trend of international legal doctrine.

98. *Quintus*: The idea of objective justice and human values stand above facts. As the ICJ case law reveals, the imperative of the realization of justice prevails over the invocation of "national security" interests or strategies. *Sextus*: The gradual formation of the autonomous legal regime of provisional measures of protection has presented distinct component elements, starting with the transposition of those measures from comparative domestic procedural law onto international legal procedure.

99. *Septimus*: They have a juridical nature of their own: directly related to the realization of justice itself, provisional measures of protection, being anticipatory in nature, in evolving from *precautionary* to *tutelary*, have been contributing to the progressive development of international law. *Octavus*: The notion of victim (or of *potential* victim), or injured party, can accordingly emerge also in the context proper to provisional measures of protection, irrespective of the decision as to the merits of the case at issue.

100. *Nonus*: Provisional measures have been extending protection to growing numbers of individuals (potential victims) in situations of vulnerability; they have thus been transformed into a true jurisdictional *guarantee* with a preventive character. *Decimus*: The ICJ case law, with the addition of its present Order, reveals the great need and relevance of provisional measures of protection in *continuing situations* of tragic vulnerability of human beings.

101. *Undecimus*: Human vulnerability, which assumes particular importance in the realm of provisional measures of protection, has drawn the attention of thinkers along the centuries. Awareness of the dictates of justice (in the line of jusnaturalist thinking) was already present in the writings of ancient Greek tragedians. *Duodecimus*: From ancient times to nowadays, there has been support for the prevalence of human conscience over the will, of jusnaturalism over legal positivism.

102. *Tertius decimus*: The imperatives of *recta ratio*, of the universal juridical conscience, overcome the invocations of *raison d'Etat*. *Quartus decimus*: The protection, by means of provisional measures, of the human person (individuals and groups in vulnerability), goes beyond the strict inter-State dimension. *Quintus decimus*: The UN Charter itself is attentive to "the peoples of the United Nations", surpassing the reductionist inter-State outlook.

103. *Sextus decimus*: There is in the *cas d'espèce* a *continuing situation* of risk of irreparable harm, affecting at a time the rights of the applicant State and its nationals. *Septimus decimus*: A *continuing situation* of the kind has had an incidence in earlier cases before the ICJ as well. *Duodevicesimus*: In such a *continuing situation*, the rights being affected and requiring protection are clearly known, their being no sense to wonder whether they are "plausible". The test of "plausibility" is here irrelevant.

104. *Undevicesimus*: In the present case, the consideration of the matter brought before the ICJ is to keep in mind international security, as it concerns the international community as a whole. *Vicesimus*: There is a universal obligation of nuclear disarmament. National perceptions cannot lose sight of international security. *Vicesimus primus*: Concerns in this respect have recently been expressed by other States parties to the JCPOA, by the UN Secretary-General, by the IAEA Director General, by the UN OHCHR's Special Rapporteur; it is indeed a matter of international concern.

105. *Vicesimus secundus*: In ordering the present provisional measures of protection, the ICJ has duly taken into account the humanitarian needs of the affected population, so as to safeguard the rights related to human life and human health, pertaining to individuals. *Vicesimus tertius*: This is a case, like previous ones before the ICJ, where provisional measures of protection have been ordered in situations of human vulnerability.

106. *Vicesimus quartus*: Such ordering therein of provisional measures of protection can only be properly undertaken from a humanist perspective, thus necessarily avoiding the pitfalls of an outdated and impertinent attachment to State voluntarism. *Vicesimus quintus*: Once again in the present case and always, human beings stand in need, ultimately, of protection against evil, which lies within themselves. *Vicesimus sextus*: In such perspective, the *raison d'humanité* is to prevail over the *raison d'Etat*. The humanized international law *(droit des gens)* prevails over alleged "national security" interests or strategies.

(Signed) Antônio Augusto CANÇADO TRINDADE.